No. 92-1107

MOTION FILED
JAN 22 1993

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

STEWART ARTHUR HOLMES, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO INSURANCE EVIDENCED BY GULF COAST MARINE CERTIFICATE NO. 11877, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER; RONALD MALCOLM PATEMAN, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO INSURANCE EVIDENCED BY COVER NOTE NO. DEL:50/85/1, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER; AND SEUMUS IAIN COWLEY, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING TO INSURANCE EVIDENCED BY COVER NOTE NO. DEL:M822/85, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER,

Petitioners,

—v.—

MR. AND MRS. ALBERT TAYLOR, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION AND BRIEF ON THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS AND MOTION FOR LEAVE TO INTERVENE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

The American Institute of Marine Underwriters (AIMU) hereby requests permission to file a brief *amicus curiae* in this matter. Consent of all parties has been duly requested. Petitioner has consented to the filing of the attached brief. No response from Respondent has been received to requests for consent by phone and by telefax.

AIMU was founded in 1898 and is a national trade association of over ninety insurance companies, each of which is authorized to engage in the business of marine insurance in one or more states of the United States. Because its membership underwrites approximately ninety percent of the marine insurance written in the United States, the issues of this case are of extreme importance to AIMU and its member companies on their efforts to maintain uniformity in and consistent application of the laws affecting maritime commerce and marine insurance. An issue of very special significance to AIMU and its member companies is presented in this case. The decision of the Court of Appeals for the Fifth Circuit held that the decision as to whether or not punitive damages may be assessed against a marine insurer in a maritime dispute should be resolved by the courts of the several states.

AIMU's interest in this appeal stems from its desire for uniformity and certainty in maritime law throughout the United States. The Fifth Circuit's decision that there is no established federal maritime law on the subject of recoverability of punitive damages is contrary to the great weight of authority and will seriously affect the American marine insurance market.

In filing this brief *amicus curiae*, AIMU is acting in support of the American and international marine insurance communities. Uniformity of admiralty law is the area of vital concern to AIMU. Because of the expertise

developed by petitioner on issues relating to marine insurance, it would be of assistance to the Court to hear its views on the problems presented in this case.

AIMU respectfully prays that this Honorable Court accept its brief *amicus curiae* in support of the Petition for Writ of Certiorari.

Respectfully submitted,

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QUESTIONS PRESENTED

1. As a matter of public policy, should an award of punitive damages under the general maritime law be recoverable against the insurer of the party against whom damages were assessed?

2. Is the scope of maritime punitive damages an issue of maritime law?

SUMMARY OF ARGUMENT

Maritime public policy does not permit the award of punitive damages against an insurer. Federal law must determine the scope of maritime punitive damages, a federally created remedy. It is improper for a federal admiralty court to abandon this determination to state courts as the Fifth Circuit has done in this case. Maritime law must be uniform.

ARGUMENT

I

AWARD OF PUNITIVE DAMAGES AGAINST AN INSURER VIOLATES MARITIME PUBLIC POLICY

Public policy does not permit recovery of punitive damages from an insurance company. *Dubois v. Arkansas Valley Dredging Co.*, 651 F. Supp. 299 at 302-03 (W. D. LA. 1987). Punitive damages are awarded to punish and to deter. See Complaint of *Merry Shipping, Inc.*, 650 F. 2d 622 (5th Cir. 1981). No such purpose is served by imposing punitive damages on a nonguilty party just because that party may be perceived as a "deep pocket". Matter of *P & E Boat Rentals, Inc.*, 872

F. 2d 642 (5th Cir. 1989). Punishment or deterrent effect can only be achieved by imposing punitive damages on the guilty. Admiralty courts have uniformly rejected attempts to impose punitive damages on an insurer. Dubois, *supra*; *Smith v. Frontlawn Enterprises, Inc.*, 1987 AMC 1130 (E. D. LA. 1986). *Northwestern National Casualty Co. v. McNulty*, 307 F. 2d 432 (5th Cir. 1962).

II

FEDERAL LAW DETERMINES THE SCOPE OF MARITIME PUNITIVE DAMAGES

Federal law has created and defined the remedy of punitive damages in maritime cases. As part of the exercise of admiralty jurisdiction, federal admiralty courts, have provided for punitive damages in certain well defined situations. Where willful or wanton misconduct is shown, punitive damages may be awarded against the wrongdoer in order to deter such conduct. Because admiralty courts specifically allow such damages in order to punish, it is apparent that there is an established federal rule on the issue.

The constitutional authority and responsibility to determine the limits and scope of a federally created right rest with the federal courts. The Admiralty Clause of the Constitution confers exclusive jurisdiction on the federal courts on the issue of the scope of the federally created right to punitive damages in Maritime matters.[1]

Where federal admiralty courts have established a remedy such as punitive damages, federal courts must also define the scope of that remedy. It is improper for

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[1] U.S. Const. art. III, § 2, cl. 1.

an admiralty court to abandon its exercise of control over federally established rights under the general maritime law.

III

MARITIME LAW MUST BE UNIFORM

Uniformity in maritime law is imperative. Relinquishing the right to define the scope of federally established maritime remedies to the several states would be injurious to foreign and interstate commerce and lead to forum shopping.

This Court has repeatedly underscored the need for uniformity in maritime law. If the decision of the Fifth Circuit in this case is allowed to stand, there could be fifty different state rules on the recoverability of punitive damages in maritime matters.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be granted in this matter.

Respectfully submitted,

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